LOGAN *v.* DAVIS.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 247. Submitted March 9, 1914.—Decided May 11, 1914.

Under § 237, Judicial Code, this court has jurisdiction to review a judgment of a state court denying a claim duly set up under a confirmatory patent issued under § 4 of the Land Grant Adjustment Act of 1887 and holding that the patentee was not entitled to the benefit of the provisions of that section.

The decision of the Secretary of the Interior that the grantee of a railroad company was a purchaser in good faith in the sense of the Adjustment Act of 1887, is conclusive so far as it is based on fact and cannot be disturbed except as it may be grounded upon an error of law, there being no charge of fraud.

The practical interpretation of an ambiguous or uncertain statute by the Executive Department charged with its administration is entitled to the highest respect; and, if acted upon for a number of years, will not be disturbed except for very cogent reasons.

Successive Secretaries of the Interior having uniformly interpreted the remedial sections of the Adjustment Act of 1887 as embracing pur-

Arkansas &c. R. Co. v. *German Nat'l Bank*, 207 U. S. 270; *Bacon* v. *Texas*, 163 U. S. 207; *Bement* v. *National Harrow Co.*, 186 U. S. 70; *Benner* v. *Lane*, 116 Fed. Rep. 407; *California Powder Co.* v. *Davis*, 151 U. S. 389; *Castillo* v. *McConnico*, 168 U. S. 674; *Clements* v. *Warner*, 24 How. 394; *Clark* v. *Lyster*, 155 Fed. Rep. 513; *De Saussure* v. *Gaillard*, 127 U. S. 216; *Delaware City Co.* v. *Reybold*, 142 U. S. 636; *Dower* v. *Richards*, 151 U. S. 658; *Duluth &c. R. Co.* v. *Roy*, 173 U. S. 587; *Elder* v. *Wood*, 208 U. S. 226; *Egan* v. *Hart*, 165 U. S. 188; *Eustis* v. *Bolles*, 150 U. S. 370; *Fowler* v. *Lamson*, 164 U. S. 252; *Giles* v. *Teasley*, 193 U. S. 146; *Gillis* v. *Stinchfield*, 159 U. S. 658; *Gjerstadengen* v. *Van Duzen* (Nor. Dak.), 76 N. W. Rep. 233; *Hamblin* v. *Western Land Co.*, 147 U. S. 531; *Hammond* v. *Johnson*, 142 U. S. 73; *Harrison* v. *Morton*, 171 U. S. 38; *Hedrick* v. *Atchison &c. R. Co.*, 167 U. S. 673; *Hale* v. *Lewis*, 186 U. S. 473; *Johnson* v. *Risk*, 137 U. S. 300; *Knepper* v. *Sands*, 194 U. S. 476; *Leathe* v. *Thomas*, 207 U. S. 93; *Leonard* v. *Vicksburg &c. R. Co.*, 198 U. S. 416; *Logan* v. *Davis*, 147 Iowa, 441; *Lyle* v. *Patterson*, 228 U. S. 211; *Lake Superior Iron Co.* v. *Cunningham*, 155 U. S. 354; *Manley* v. *Tow*, 110 Fed. Rep. 241; *Mo. Pac. Ry. Co.* v. *Fitzgerald*, 160 U. S. 556; *Moran* v. *Horsky*, 178 U. S. 205; *Moss* v. *Donovan*, 176 U. S. 413; *Murdock* v. *Memphis*, 20 Wall. 590; *Nelson* v. *Nor. Pac. R. Co.*, 188 U. S. 108; *Olson* v. *Traver*, 26 L. D. 350; *Ostrom* v. *Wood*, 140 Fed. Rep. 294; *Pierce* v. *Somerset R. Co.*, 171 U. S. 641; *Pittsburg Iron Co.* v. *Cleveland Iron Co.*, 178 U. S. 270; *Rakes* v. *United States*, 212 U. S. 58; *Remington Paper Co.* v. *Watson*, 173 U. S. 443; *Rutland R. Co.* v. *Cent. Ver. R. R. Co.*, 159 U. S. 630; *Seaboard &c. R. Co.* v. *Duvall*, 225 U. S. 477; *Seneca Nation* v. *Christy*, 162 U. S. 263; *S. C. & St. Paul R. Co.* v. *Osceola County*, 43 Iowa, 318; *S. C. & St. Paul R. Co.* v. *United States*, 159 U. S. 349; *Speed* v. *McCarthy*, 181 U. S. 269; *Smith* v. *Hollenbeck*, 231 Illinois, 484; *St. Louis &c. R. Co.* v.

McGee, 115 U. S. 469; *St. Louis &c. R. Co.* v. *Missouri*, 156 U. S. 478; *Walker* v. *Ehresman* (Neb.), 113 N. W. Rep. 218; *Weyerhauser* v. *Minnesota*, 176 U. S. 550; *Wood Machine Co.* v. *Skinner*, 139 U. S. 293; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 112.

MR. JUSTICE VAN DEVANTER, after making the foregoing statement, delivered the opinion of the court.

As Logan claimed as a purchaser in good faith within the meaning of § 4 of the adjustment act of 1887, under which a confirmatory patent had been issued to him, and the Supreme Court of the State denied that claim and held that he was not entitled to the benefit of the provisions of that section, the judgment is so plainly subject to review by this court under § 237 of the Judicial Code that a contention to the contrary, found in one of the briefs, is dismissed as not justifying further comment. *Gauthier* v. *Morrison*, 232 U. S. 452.

And as the Secretary of the Interior found, from the evidence submitted in the contest before the Land Department, that Logan was a purchaser in good faith in the sense of the adjustment act, and no basis was laid in the pleadings or agreed statement of facts for rejecting or disturbing that decision save as it was said to be grounded upon error of law and misconstruction of the statute, it is manifest that unless some of the objections urged against it on that score are well taken, Logan's title should be sustained. *Vance* v. *Burbank*, 101 U. S. 514, 519; *Lee* v. *Johnson*, 116 U. S. 48; *Gertgens* v. *O'Connor*, 191 U. S. 237, 240; *Ross* v. *Day*, 232 U. S. 110, 116

The act of 1887, in its first section, authorized and required the Secretary of the Interior immediately to adjust, in accordance with the decisions of this court, the several land grants made by Congress to aid in the construction of railroads "and heretofore unadjusted." This included

the grant made by the act of 1864, unless already adjusted. That it had not been adjusted by the Land Department is conceded, but it is insisted that it had been adjusted by the legislation and action of the State in 1882 and 1884, and so was not within the operation of the adjustment act of 1887. To this we cannot assent. The United States had not committed the adjustment to the State, and neither had the State assumed to make an adjustment for the United States. Prior to the act of 1887 the administration of the several railroad land grants rested with the Land Department, of which the Secretary of the Interior is the head, *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U. S. 155, 166–7, and some of the lesser grants had progressed to a final adjustment in regular course of administration. It was because of this that the restrictive words "and heretofore unadjusted" were inserted in the act. They meant only that adjustments theretofore effected by the Land Department in regular course were not to be disturbed. The facts before recited amply illustrate that this grant had not proceeded to such an adjustment. The Secretary of the Interior treated it as unadjusted, *Sioux City & St. Paul R. R. Co.*, 6 L. D. 54, 71, and this court impliedly, if not expressly, approved his action. *Sioux City & St. Paul Railroad Co.* v. *United States*, 159 U. S. 349.

The second section of the act of 1887 related to the recovery by the United States of lands which, upon the completion of any adjustment, or sooner, appeared to have been erroneously certified or patented by the Land Department "to or for the use or benefit of any company" claiming under a grant to aid in the construction of a railroad. The third section related to the reinstatement of preëmption and homestead entries found, in the course of any adjustment, to have been erroneously canceled by reason of such a grant or a withdrawal, and directed that where the entryman failed to apply for reinstatement within a

reasonable time, to be fixed by the Secretary of the Interior, the land should be disposed of under the public-land laws to *bona fide* purchasers, if any, and, if there were none, then to *bona fide* settlers. The fourth section read as follows:

"That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney General shall cause suit or suits to be brought against such company for the said amount: *Provided*, That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase-money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: *And provided*, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land-grant for conditions broken, or as au-

thorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions."

This section was amended February 12, 1896, c. 18, 29 Stat. 6, by adding to it the following:

"*Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

Section five related to lands apparently within such a grant and lying opposite the constructed parts of the road, but excepted from the operation of the grant and not certified or patented to or for the benefit of the railroad company, and provided that where any such land was sold by the company to a *bona fide* purchaser, who was a citizen of the United States or had declared his intention to become such, the purchaser, his heirs or assigns, could obtain a patent by paying the ordinary Government price, but that this privilege should not exist if at the time of the sale by the company the land was occupied by an adverse claimant under the preëmption or homestead laws.

Whether § 4 was confined to purchases made prior to the date of the act, or equally included subsequent purchases, where made in good faith, is one of the controverted questions in the case. Both views have support in the terms of the act, and if the question were altogether new there would be room for a reasonable difference of opinion as to what was intended. Certainly, resort to interpretation would be necessary. But the question is not altogether new. It has often arisen in the administration of the act, and successive Secretaries of the Interior uniformly have

held that the remedial sections embraced purchases after the date of the act, no less than prior purchases, if made in good faith. *Sethman* v. *Clise*, 17 L. D. 307; *Holton* v. *Rutledge*, 20 L. D. 227; *Andrus* v. *Balch*, 22 L. D. 238; *Briley* v. *Beach, Id.* 549; *Re Carlton Seaver*, 23 L. D. 108; *Neilsen* v. *Central Pacific Railroad Co.*, 26 L. D. 252. Many thousands of acres have been patented to individuals under that interpretation, and to disturb it now would be productive of serious and harmful results. The situation therefore calls for the application of the settled rule that the practical interpretation of an ambiguous or uncertain statute by the Executive Department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons. *United States* v. *Moore*, 95 U. S. 760, 763; *Hastings and Dakota Railroad Co.* v. *Whitney*, 132 U. S. 357, 366; *United States* v. *Alabama Great Southern Railroad Co.*, 142 U. S. 615, 621; *Kindred* v. *Union Pacific Railroad Co.*, 225 U. S. 582, 596.

The remedial sections of the act were also considered by this court in *United States* v. *Southern Pacific Railroad Co.*, 184 U. S. 49, 56, which involved several purchases made after the date of the act, and it was there said: "But the act itself bears upon its face evidence that it was not intended to be limited to cases of purchases from the railroad company prior to its date." And, after referring to the language of §§ 2 and 3, it was added: "This seems to imply an intent that all mistakes of the nature referred to which shall have occurred up to the very completion of the adjustment may be rectified. Section 4 makes provision for the issue of patents to certain purchasers from railroad companies, providing proof shall be made 'within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted.' While other sections may not be so specific, yet placing them

alongside of those from which quotations have been made it is reasonable to hold that the act applies not merely to transactions had before its date, but to any had before the time of final adjustment. In this case the several grants to the Southern Pacific have not yet been finally adjusted. Further, it must be borne in mind that this is a remedial statute, and is to be construed liberally, and so as to effectuate the purpose of Congress and secure the relief which was designed, and the mere date of the transaction between the purchaser and the railroad company is not of itself vital in determining whether there is or is not an equity in behalf of the purchaser."

Counsel for Davis rely upon *Knepper* v. *Sands*, 194 U. S. 476, as placing a different interpretation upon the adjustment act. But, although some broad language is found in the opinion, the real decision did not go as far as suggested. The case came here upon a certificate from a Circuit Court of Appeals, and the question presented for decision, considering the facts stated in the certificate, was, whether a purchase from the railroad company of land erroneously patented for its benefit under the grant of 1864 could be esteemed a purchase in good faith, within the meaning of § 4 of the act of 1887, where at the time of the purchase the land was occupied by a *bona fide* settler who was residing upon, improving and cultivating the same with a view to acquiring it under the homestead law. The question was answered in the negative, particular emphasis being laid upon the settler's occupancy at the time of the purchase and upon the well known policy of favoring actual settlers. The answer must have been the same whether the purchase was before or after the date of the act, and manifestly there was no purpose to overrule or qualify the decision in *United States* v. *Southern Pacific Railroad Co.*, *supra*, for it was not even mentioned. So, reading the opinion in *Knepper* v. *Sands* with appropriate regard for the facts of the case, we think it is not in point

or controlling here, for no one was occupying or claiming this tract under the settlement laws at the time it was purchased from the company.

The contention that Logan was charged with constructive notice of the defect in the company's title and so was not a purchaser in good faith, in the sense of the adjustment act, must be overruled, as was a like contention in *United States* v. *Winona & St. Peter Railroad Co.*, 165 U. S. 463. It was there said, referring to the remedial provisions of § 4 (p. 480): "It will be observed that this protection is not granted to simply *bona fide* purchasers (using that term in the technical sense), but to those who have one of the elements declared to be essential to a *bona fide* purchaser, to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser if, in actual ignorance of any defect in the railroad company's title and in reliance upon the action of the Government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands, and to reinforce his defective title by a direct patent from the United States, and to leave to the Government a simple claim for money against the railroad company." And, referring to the provisions of § 5, it was further said (p. 481): "It is true the term used here is '*bona fide* purchaser,' but it is a *bona fide* purchaser from the company, and the description given of the lands, as not conveyed and 'for any reason excepted from the operation of the grant,' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent." This view of the purpose and meaning of the act was repeated and applied in *Gertgens* v. *O'Connor*, 191 U. S. 237, and *United States* v. *Chicago, Milwaukee & St. Paul Railway Co.*, 195 U. S. 524

As it thus appears that the decision of the Secretary of the Interior was right in point of law, and as it was conclusive upon all questions of fact (*Gertgens* v. *O'Connor*, *supra*), it follows that the state court erred in not sustaining Logan's title obtained under that decision.

Decree reversed.

SMITH *v.* STATE OF TEXAS